

REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application. Regarding the amendments, Applicants submit that support for the amendments may be found in the application as originally filed. Support for the size of the light scattering particles may be found, among other places, at page 8, lines 4-6 of the specification as originally filed. The use of water in the composition of the presently claimed invention is described, among other places, on page 13 of the specification, line 1. the amendment to claim 8 is supported, among other places, by the claims as originally filed. In view of the above, all amendments have been made in compliance with 35 USC §132 and no new matter has been added.

I. Election/Restriction

Applicants, again, confirm the election of claims 1-8. Applicants will consider cancelling claims 9-19 upon confirmation that claims 1-8 are allowable.

II. Rejection Under 35 USC §112, Second Paragraph

The Examiner has rejected claim 8 and suggests that the same is indefinite for failing to quickly point out distinctly claimed subject matter which Applicants regard as the invention. The Examiner mentions that the language "up to about" is unclear. While Applicants respectfully disagree, Applicants have amended claim 8 in order to expedite the prosecution of the present patent application and to further business objectives. In view of this, Applicants request that the rejection made to claim 8 under 35 USC §112, second paragraph be withdrawn and rendered moot.

III. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1-8 under 35 USC §102(b) as being anticipated by Vatter et al., U.S. Patent Application No. 2002/0028223 (hereinafter, '223). In the rejection, the Examiner mentions, in summary, that the '223 reference describes a anhydrous skin treatment composition with cross-linked siloxane elastomer as well as pigment. In view of this, the Examiner believes that claims 1-8 lack novelty and the rejection made under 35 USC §102(b) is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

Applicants respectfully submit that claim 1, as originally presented, is directed to a cosmetic composition that comprises 0.01 to 30% by weight cross-linked polysiloxane elastomer, about 0.1% to about 25% light scattering particles, and a cosmetically acceptable vehicle. The composition of claim 1 is further defined to be one having a specific viscosity, a specific opacity, a gloss of up to about 10 g.u., a normal force of up to about 0.1N at a shear rate of 10,000 1/s such that the composition results in an improvement of appearance of facial pores of at least about 2 as measured by the Pore Ruler. As amended, the composition of claim 1 has been further characterized as one which is water-based and comprising light scattering particles having a particle size of less than about 30 micrometers. Nowhere are such limitations even remotely described in the '223 reference. Applicants have amended claim 1 to expedite the prosecution of the present application and to further business objectives. Since the '223 reference is based on anhydrous compositions, Applicants submit that claims 1-8, as now presented, are novel in light of the '223 reference. In view of this, Applicants submit that the rejection made under 35 USC §102(b) be withdrawn and rendered moot.

IV. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1-6 and 8 under 35 USC §102(b) as being anticipated by Sakuta, U.S. Patent No. 6,747,115 (hereinafter, '115).

In the rejection, the Examiner mentions, in summary, that the '115 reference describes a silicone polymer in a composition along with titanium dioxide coated mica. The Examiner believes that the viscosity, opacity, gloss, normal force and Pore Ruler values are inherent properties in the compositions described in the '115 reference. Therefore, the Examiner believes the '115 reference renders the claims non-patentable under 35 USC §102(b).

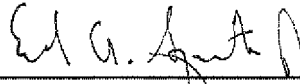
Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

Applicants submit that none of the properties described in the presently claimed invention are even remotely suggested in the '115 reference. Nevertheless, Applicants have amended claim 1 to incorporate the limitations of claim 7 so that the prosecution of the present patent application can be expedited and so that Applicants can further business objectives. In view of this, Applicants submit that all material elements of the claimed invention as now presented are not set forth in a single prior art reference, namely the '115 reference. Therefore, Applicants request that the rejection made under 35 USC §102(b) be withdrawn and rendered moot.

Applicants submit that all claims of record are now in condition for allowance. Reexamination and reconsideration of the subject application are respectfully requested.

In the event the Examiner has any questions concerning the present patent application, the Examiner is kindly invited to contact the undersigned at her earliest convenience.

Respectfully submitted,



Edward A. Squillante, Jr.
Registration No. 38,319
Attorney for Applicant(s)

EAS/pod
(201) 894-2925